

MICHIGAN DEPARTMENT OF CORRECTIONS POLICY DIRECTIVE SUBJECT HOMOSEXUAL PREDATOR DESIGNATIONS	EFFECTIVE DATE 07/15/2002	NUMBER 05.01.150
	SUPERSEDES 05.01.150 (08/07/00)	
	AUTHORITY MCL 791.203; 791.251 et seq.	
	ACA STANDARDS NONE	
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POLICY STATEMENT:

The Department shall identify and designate prisoners in Correctional Facilities Administration (CFA) institutions who are homosexual predators in accordance with this policy.

POLICY:

DESIGNATION

- A. A prisoner shall be designated as a homosexual predator if there is verified documentation (e.g., a conviction, finding of guilt on a major misconduct, information in a jail report) that s/he used force, or the threat of force, to commit or to attempt to commit a non-consensual sexual act involving a victim of the same sex. However, if the victim was under 14 years of age at the time of the incident, the prisoner shall be designated as a homosexual predator only with the approval of the CFA Deputy Director. The incident need not have occurred within an institutional setting.
- B. Staff shall complete a Notice of Homosexual Predator Designation (CSJ-351) to designate a prisoner as a homosexual predator. The designation shall be entered on the Department's computerized database (e.g., CMIS, OMNI).
- C. A prisoner who has been designated as a homosexual predator shall be rescreened for appropriate security classification in accordance with PD 05.01.130 "Prisoner Security Classification" and transferred if necessary.
- D. In accordance with PD 05.01.130 "Prisoner Security Classification" and PD 05.01.140 "Prisoner Placement and Transfer", a prisoner designated as a homosexual predator shall not be classified to security Level I, II or III or placed in a double-bunked cell or room.

HEARING REQUIREMENTS

- E. Due to a court ruling, a prisoner designated as a homosexual predator on or after April 16, 1999 may request a formal hearing to be conducted pursuant to Administrative Rule 791.3315 to contest the basis for that designation, unless the designation is based upon a guilty finding on the major misconduct of Sexual Assault which involves a victim of the same sex. A prisoner designated as a homosexual predator based upon such a misconduct shall not be entitled to a second hearing on the designation, as the major misconduct hearing fulfills this hearing requirement. A prisoner designated as a homosexual predator prior to April 16, 1999 shall not be entitled to a formal hearing.
- F. To request a hearing on his/her homosexual predator designation, a prisoner must complete the appropriate section of the Notice of Homosexual Predator Designation (CSJ-351) and send the completed Notice to the hearing investigator/coordinator at the institution where the prisoner is housed. The hearing investigator/coordinator shall interview the prisoner, if an interview is requested by the prisoner, and schedule a hearing to be conducted by a hearing officer of the Hearings and Appeals Division, Office of Policy and Hearings (OPH). The hearing shall be conducted no later than 60 calendar days after the request for a hearing is received by the hearing investigator/coordinator. If the prisoner is transferred before the hearing is conducted, the hearing investigator/coordinator shall

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ensure that the hearing request is sent directly to the hearing investigator/coordinator at the receiving institution.

- G. The OPH hearing officer shall decide whether the facts alleged in the Notice have been established by a preponderance of the evidence and whether those facts are sufficient to establish that the prisoner used force, or the threat of force, to commit or attempt to commit a non-consensual sexual act which involves a victim of the same sex. If the hearing is not conducted within 60 calendar days, the hearing officer shall remove the designation unless s/he determines and sets forth in the Administrative Hearing Report - Formal (CSJ-153) that there is reasonable cause for delay or that the time requirements are waived by the prisoner. A delay shall be determined to be reasonable unless it is due to staff negligence or misconduct, except that excessive work load shall not be reasonable cause for delay unless it is due to unusual circumstances (e.g., institutional disturbance, mobilization, severe weather).

APPEAL OF DESIGNATION

- H. If either the Warden or the prisoner disagrees with the OPH hearing officer's decision at the hearing on the homosexual predator designation, s/he may request a rehearing as set forth in PD 03.03.105 "Prisoner Discipline".
- I. A prisoner designated as a homosexual predator based solely upon a guilty finding on the major misconduct of Sexual Assault which involves a victim of the same sex may appeal the designation by filing a grievance as provided for in PD 03.02.130 "Prisoner/Parolee Grievances", but may not grieve the OPH hearing officer's decision on the Sexual Assault misconduct. However, the prisoner may request a rehearing on the hearing officer's decision as set forth in PD 03.03.105 "Prisoner Discipline".

REMOVAL OF DESIGNATION BY CFA

- J. Whenever a discharged prisoner with a homosexual predator designation returns with a new commitment, reception facility staff shall review the original basis for that designation and the conduct of the prisoner since the designation to determine whether there is a sufficient basis to believe that the prisoner no longer presents a threat as a predator. A similar review shall be conducted for each prisoner designated as a homosexual predator when s/he is rescreened for security classification pursuant to PD 05.01.130 "Prisoner Security Classification". If it is believed at the time of review by reception facility or at the time of rescreening for security classification that the prisoner may no longer present a threat as a predator, the case shall be referred to the Warden for review. A prisoner designated as a homosexual predator based on an incident which occurred five years or more in the past also may request removal of the designation by submitting a written request directly to the Warden for review.
- K. If the Warden believes that the prisoner may no longer present a threat as a predator, s/he shall forward the case to the CFA Deputy Director, through the appropriate chain of command, for a final determination. Removal may be denied at any level of review. The CFA Deputy Director shall ensure that notification of the determination is provided to the Warden, who shall ensure that the prisoner is notified.
- L. A prisoner whose request is denied may not request removal of the designation for at least one year after the date of the denial.

DOCUMENTATION

- M. If a homosexual predator designation is not upheld by an OPH hearing officer or is removed by a court or the CFA Deputy Director, the hearing officer's decision, court order, or notification from the Deputy Director shall be retained in the prisoner's commitment files with the original documentation of designation. The homosexual predator designation shall be promptly deleted from the Department's computerized database, and the prisoner rescreened for appropriate security classification in accordance with PD 05.01.130 "Prisoner Security Classification".

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REDESIGNATION

- N. Once a homosexual predator designation is removed, a prisoner shall not be redesignated based solely on the original incident that was the basis for the removed designation. However, the prisoner may be redesignated as a homosexual predator based on another incident, consistent with this policy.

OPERATING PROCEDURES

- O. Each Warden shall ensure that procedures necessary to implement this policy directive are developed consistent with policy requirements within 60 calendar days after its effective date.

AUDIT ELEMENTS

- P. A Primary Audit Elements List has been developed and will be provided to Wardens to assist with self audit of this policy, pursuant to PD 01.05.100 "Self Audit of Policies and Procedures".

WSO:OPH:06/21/02